TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 60

PAUL POE, ET AL., APPELLANTS,

vs.

ABRAHAM S. ULLMAN, STATE'S ATTORNEY.

No. 61

C. LEE BUXTON, APPELLANT,

vs.

ABRAHAM S. ULLMAN, STATE'S ATTORNEY.

APPEALS FROM THE SUPREME COURT OF ERRORS OF CONNECTICUT

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INDEX

	Original	Print
Consolidated record from the Superior Court of New Haven County, State of Connecticut		
Complaint in Poe, et al. v. Ullman	1	1
Complaint in Doe v. Ullman	6	5
Complaint in Buxton v. Ullman	12	10
Demurrer	17	14
Memorandum of decision on demurrers, Healey, J.	18	16
Motion for judgment after demurrer sustained	21	18
Order entering judgment	21	19
Judgment, Poe, et al. v. Ullman	22	19
Judgment, Doe v. Ullman	23	20
Judgment, Buxton v. Ullman	24	22
Plaintiffs' appeal	25	23
Assignment of errors	26	23

RECORD PRESS, PRINTERS, NEW YORK, N. Y., AUGUST 10, 1960

	Original	Print
Proceedings in the Supreme Court of Errors of Connecticut	28	25
Opinion, Baldwin, C.J.	28	25
Judgment, Poe, et al. v. Ullman	32	35
Judgment, Doe v. Ullman	33	36
Judgment, Buxton v. Ullman	34	37
Notice of appeal, Poe, et al. v. Ullman	35	38
Notice of appeal, Doe v. Ullman	37	39
Notice of appeal, Buxton v. Ullman	39	40
Clerk's certificate (omitted in printing)	41	41
Order noting probable jurisdiction and consolidating cases	42	42

[fol. 1]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY STATE OF CONNECTICUT

PAUL POE et al.,

vs.

ABRAHAM S. ULLMAN, State's Attorney.

COMPLAINT—Filed May 22, 1958

To the Sheriff of the County of New Haven, or His Deputy—

Greetings:

By authority of the State of Connecticut you are hereby commanded to summon Abraham S. Ullman of the Town of Hamden, County of New Haven, and State of Connecticut, as he is State's Attorney in and for the County of New Haven, to appear before the Superior Court to be held at New Haven, within and for the County of New Haven, [fol. 2] on the First Tuesday of June, 1958, then and there to answer unto Paul Poe and Pauline Poe, of the Town of New Haven, in said County, and State, in a civil action wherein the plaintiffs complain and say:

1. The plaintiffs are a husband and wife who live together in the Town of New Haven. Mr. Poe is a businessman and his wife is a housewife. Mrs. Poe is 26 years old; Mr. Poe is 30 years old. They have no living children.

2. The plaintiffs consulted as a physician Dr. C. Lee Buxton, hereinafter referred to as said physician, who is and has been a Board-certified specialist in Obstetrics and Gynecology since the year 1940 and is at present Professor and Chairman of the Department of Obstetrics and Gynecology at the Yale University School of Medicine and of the Obstetrical Service of the Grace-New Haven Community Hospital.

3. The plaintiffs consulted said physician particularly concerning an apparent genetic problem. Mrs. Poe has had three consecutive pregnancies, each of which has terminated in an infant with multiple congenital abnormalities inconsistent with life. The Poes' first infant was delivered on January 31, 1954, with congenital heart disease and kidney abnormality. It died after nine days of life. Their second child was born on April 14, 1955, and was a mongoloid with associated renal and cardiac lesions. It expired within six days. Their third child was born on October 17, 1957, with evidence of cerebral and gastro-intestinal mal-development. After ten weeks in a nursing home, it perished. Even had these children survived, it would be highly unlikely that any of them would have been able to lead a normal or sound life. Plaintiffs have suffered great emotional stress from these successive failures and would undergo severe strain were another such tragedy to occur. The basic cause of these abnormalities is thought by Dr. Buxton and other consultant specialists to be genetic, but the underlying mechanism is as yet unclear, thereby seriously impeding prognosis, prevention and/or treatment.

4. The existence of such genetic condition as described in Paragraph 3 hereof, until knowledge of its ultimate nature and functioning may be established and applied, renders another pregnancy extremely disturbing to the [fol. 3] physical and mental health of the plaintiffs in that such pregnancy, carrying unknown and incalculable possibilities of producing another such monstrous infant, makes the likelihood of psychological stress beyond the breaking point, on the part of either or both of the plaintiffs, a probable consequence.

5. Plaintiffs need and require and have asked said physician for medical advice as to what preventive measures can be taken to avert the occurrence of the dangerous condition specified in Paragraph 4 hereof.

6. The plaintiffs have knowledge of the fact that it is the opinion of said physician that the best and safest medical treatment which could be prescribed would be to inform them as to methods of preventing conception. Said physi-

can has knowledge of drugs, medicinal articles and instruments which in fact can be used in a safe, sanitary and effective manner so as, without injury, to prevent conception and avert the consequences and results thereof, as specified in Paragraph 4 hereof.

7. Medically speaking, the use of such articles, drugs and instruments is indicated as the best and safest preventive measure necessary for the protection and preservation of the health of the plaintiffs.

8. The plaintiffs have been unable to obtain the information and advice referred to in Paragraph 6 for the sole reason that the delivery and use of such information and advice may or will be claimed by the defendant State's Attorney to constitute offenses against the Statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949.

9. The defendant State's Attorney, in the course of his public duty, intends to prosecute any offense against said statutes and common law, and claims that the giving of information and advice and the procurement and delivery of drugs, articles and instruments and the use thereof, as stated in Paragraph 6 herein would constitute offenses forbidden by the criminal statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949.

[fol. 4] 10. The plaintiffs claim, on the contrary, that such acts proposed by them to be done do not violate any valid Statutes or any valid rule of the common law of this State; but as citizens and residents of this State, they are ignorant as to their rights, privileges, powers and immunities on the one hand, as concerns relations with this State, and on the other hand as concerns their relations with said physician.

11. If this Court shall determine and declare prescription and advice by said physician for the use of such articles, drugs and instruments and the use thereof under the circumstances of this case not to be forbidden by the crim-

inal statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949 because they are in conflict with the Constitution of the United States and especially Amendment XIV thereof, the plaintiffs will be able to obtain from said physician such prescription and advice and to procure said drugs, articles and instruments and instructions as to how to use the same in a safe, sanitary and effective manner so as to avoid the dangerous condition specified in Paragraph 4.

12. If, however, this Court should find and determine that the proposed prescription, advice, procurement, delivery, and treatment and instruction and use, above referred to would constitute an offense forbidden by said Statutes and the common law, and that they are not in conflict with the Constitution of the United States, and if plaintiffs should be convicted of the commission of offenses against such Statutes, the plaintiffs would be subject to a fine or imprisonment or both.

13. Unless the remedy herein prayed for be granted, the plaintiffs will suffer irreparable injury.

14. The plaintiffs have an interest, legal or equitable, by reason of danger of loss of liberty and/or property or of uncertainty as to their rights and other jural relations.

15. There is an actual bona fide and substantial question or issue in dispute, and substantial uncertainty of legal relations which require settlement between the parties.

[fol. 5] 16. All persons having an interest in the subject matter of the complaint are parties to this action.

The plaintiffs claim a declaratory judgment which shall declare:

1. Whether or not sections 8568 and 8875 of the General Statutes of Connecticut Revision of 1949 are in conflict with the Constitution of the United States and especially of Amendment XIV thereof as depriving plaintiffs of life and liberty without due process of law.

2. Whether or not said Statutes constitute a valid exercise of the police power of the State as applied to the facts stated in this complaint.

I hereby certify that I have personal knowledge of the financial responsibility of the plaintiffs and deem it sufficient to pay the costs of this action.

Of this writ with your doings thereon, due service and return make.

Dated at New Haven this twenty-second day of May, 1958.

Catherine G. Roraback, Commissioner of the Superior Court.

[fol. 6]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

STATE OF CONNECTICUT

JANE DOE,

vs.

ABRAHAM S. ULLMAN, State's Attorney.

COMPLAINT—Filed May 22, 1958

To the Sheriff of the County of New Haven, or His Deputy—

Greetings:

By authority of the State of Connecticut you are hereby commanded to summon Abraham S. Ullman of the Town of Hamden, County of New Haven and State of Connecticut, as he is State's Attorney in and for the County of New Haven, to appear before the Superior Court to be held at [fol. 7] New Haven, within and for the County of New Haven, on the first Tuesday of June, 1958, then and there to answer unto Jane Doe, of the Town of New Haven, in

said County and State, in a civil action wherein the plaintiff complains and says:

1. The plaintiff is a housewife who resides and has continuously resided in the Town of New Haven with her husband since their marriage in 1954. Plaintiff is 25 years old. She and her husband have no living children.

2. Dr. C. Lee Buxton, hereinafter referred to as said physician, is and has been a Board-certified Specialist in Obstetrics and Gynecology since the year 1940. At present he is Professor and Chairman of the Department of Obstetrics and Gynecology at the Yale University School of Medicine and of the Obstetrical Service of the Grace-New Haven Community Hospital. In his latter capacity he is responsible for diagnosis and treatment of all patients admitted to that Service and was so in charge when the plaintiff was admitted as stated in Paragraph 3 hereof.

3. The plaintiff was admitted to the Obstetrical Service of the Grace-New Haven Community Hospital through the Emergency Room on January 25, 1957, with a diagnosis of hypertensive cardiovascular disease, three and one-half month intrauterine pregnancy, toxemia of pregnancy, and Cushing's syndrome; blood pressure 280/140. Because of the severe hypertensive toxemia, it was decided that sound medical practice called for termination of the pregnancy. However, on January 28, 1957, before this procedure could be carried out, plaintiff developed a cerebral hemorrhage, which produced a right hemiplegia and total aphasia. After two weeks of complete unconsciousness and a total of nine weeks of acute illness, during which time it was necessary to carry out several life-saving procedures, including a tracheotomy and continuous intravenous therapy with hypotensive drugs, the patient was then transferred to Gaylord Sanitarium. She returned to the Grace-New Haven Community Hospital on June 19, 1957, at which time she spontaneously delivered an 1125 gm. stillborn fetus estimated to be 7 and ½ to 8 months developed. At present the plaintiff has hypertensive cardiovascular disease, severe paresis of the right leg, total paralysis of the right arm, residual [fol. 8] kidney damage, marked impairment of speech, and emotional instability.

The existence of such condition as described in Paragraph 3 hereof renders the possibility of another pregnancy exceedingly perilous to the life of the plaintiff, in that such a pregnancy would induce in the plaintiff an abnormal condition known as hypertensive toxemia of pregnancy, and if such condition should occur with the severity anticipated in this individual, who has already suffered extensive renal damage it would almost inevitably result in the death of the plaintiff.

5. The plaintiff needs and requires, and has asked said physician for medical advice as to what preventive measures can be taken to avert the occurrence of the dangerous condition described in Paragraph 4 hereof.

6. The plaintiff has knowledge of the fact that it is the opinion of said physician that the best and safest medical treatment which could be prescribed for the plaintiff would be to inform her as to methods of preventing conception. Said physician has knowledge of drugs, medicinal articles and instruments which in fact could be used by the plaintiff in a safe, sanitary and effective manner so as, without injury to the plaintiff, to prevent conception and avert the consequences and results thereof, as described in Paragraph 4 hereof.

7. Medically speaking, the use of such articles, drugs, and instruments is indicated as the best and safest preventive measure necessary for the protection and preservation of the life and health of the plaintiff.

8. The plaintiff has been unable to obtain the information and advice referred to in Paragraph 6 for the sole reason that the delivery and use of such information and advice may or will be claimed by the defendant State's Attorney to constitute offenses against the Statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949.

9. The defendant State's Attorney, in the course of his public duty, intends to prosecute any offense against said Statutes and common law, and claims that the giving of information and advice and the procurement and delivery

of drugs, articles and instruments and the use thereof, as stated in Paragraph 6 herein, would constitute offenses for- [fol. 9] bidden by the criminal statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949.

10. The plaintiff claims, on the contrary, that such acts proposed by her to be done do not violate any valid Statutes or any valid rule of the common law of this State; but she, as a citizen and resident of this State, is ignorant as to her rights, privileges, powers and immunities on the one hand, as concerns her relations with this State, and on the other hand as concerns her relations with said physician.

11. If this Court shall determine and declare prescription and advice by said physician for the use of such articles, drugs and instruments for the treatment of the plaintiff under the circumstances of this case not to be forbidden by the criminal statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949 because they are in conflict with the Constitution of the United States and especially Amendment XIV thereof, plaintiff will be able to obtain from said physician such prescription and advice, and to procure said drugs, articles and instruments and instructions as to how to use the same in a safe, sanitary and effective manner so as to avoid the dangerous condition specified in Paragraph 4.

12. If, however, this Court should find and determine that the proposed prescription, advice, procurement, delivery, treatment, instruction, and use above referred to would constitute an offense forbidden by said statutes and the common law, and that they are not in conflict with the Constitution of the United States, and if plaintiff should be convicted of the commission of offenses against such statutes, the plaintiff would be subject to a fine or imprisonment, or both.

13. Unless the remedy herein prayed for be granted, the plaintiff, as a woman with the aforesaid bodily condition, will suffer irreparable injury.

14. The plaintiff has an interest, legal or equitable, by reason of danger of loss of liberty and/or property or of uncertainty as to her rights and other jural relations.

[fol. 10] 15. There is an actual bona fide and substantial question or issue in dispute, and substantial uncertainty of legal relations which require settlement between the parties.

16. All persons having an interest in the subject matter of the complaint are parties to this action.

The plaintiff claims a declaratory judgment which shall declare:

1. Whether or not Sections 8568 and 8875 of the Connecticut Revised Statutes of 1949 are in conflict with the Constitution of the United States and especially of Amendment XIV thereof as depriving plaintiff of life and liberty without due process of law.

2. Whether or not said Statutes constitute a valid exercise of the police power of the State as applied to the facts stated in this complaint.

I hereby certify that I have personal knowledge of the financial responsibility of the plaintiff and deem it sufficient to pay the costs of this action.

Of this writ with your doings thereon, due service and return make.

Dated at New Haven this twenty-second day of May, 1958.

Catherine G. Roraback, Commissioner of the Superior Court.

[fol. 12]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

STATE OF CONNECTICUT

C. LEE BUXTON,

vs.

ABRAHAM S. ULLMAN, State's Attorney.

COMPLAINT—Filed May 8, 1958

[Writ and complaint as amended by Stipulation filed February 14, 1959.]

To the Sheriff of the County of New Haven, or His Deputy—

Greetings:

By authority of the State of Connecticut you are hereby commanded to summon Abraham S. Ullman of the Town of Hamden, County of New Haven, and State of Connecticut, as he is the State's Attorney in and for the County of New Haven, to appear before the Superior Court to be [fol. 13] held at New Haven, within and for the County of New Haven, on the first Tuesday of June, 1958, then and there to answer unto C. Lee Buxton, of the Town of Woodbridge, in said County and State, in a civil action wherein the plaintiff complains and says:

1. The plaintiff is a registered licensed physician. He is a graduate of the Columbia University College of Physicians and Surgeons, from which he received the degree of Doctor of Medicine in the year 1932, and the degree of Med. S.D. in 1940. He has had postgraduate training in Obstetrics and Gynecology and Surgery at the Mary Imogene Bassett Hospital in Cooperstown, New York and at the Sloane Hospital for Women of the Columbia-Presbyterian Medical Center in New York City, and since the year 1940 has been a Board-certified specialist in Obstetrics and Gyne-

cology. He was formerly Professor of Obstetrics and Gynecology at the Columbia-Presbyterian Medical Center in New York City, and at present is a Professor and Chairman of the Department of Obstetrics and Gynecology at the Yale University School of Medicine and the Grace-New Haven Community Hospital.

2. The plaintiff is responsible for the diagnosis and treatment of all patients admitted to the Obstetrical Service of the Grace-New Haven Community Hospital and was in charge of that service, when the patient described in paragraph 3 herein was admitted to said service for diagnosis and treatment as described in paragraph 4 hereof.

3. Jane Doe, hereafter referred to as said patient, is 25 years old, a married woman and housewife who resides and has continually resided in the Town of New Haven with her husband since their marriage in 1954. She and her husband have no living children.

4. Said patient was admitted to the Obstetrical Service of the Grace-New Haven Community Hospital through the Emergency Room on January 25, 1957, with the diagnosis of hypertensive cardiovascular disease, three and one-half month intra-uterine pregnancy, toxemia of pregnancy, and Cushing's syndrome; blood pressure 280/140. Because of the increasing hypertension, it was decided that sound medical practice called for termination of the pregnancy. However, on January 28, 1957, before this procedure could be [fol. 14] carried out, said patient developed a massive cerebral hemorrhage, which produced a right hemiplegia and total aphasia. The patient was transferred to Gaylord Sanitarium, and returned to the Grace-New Haven Community Hospital on June 19, 1957, at which time she spontaneously delivered an 1125 gm. stillborn fetus estimated to be 7 and ½ to 8 months developed. At present said patient has hypertensive cardiovascular disease, severe paresis of the right leg, total paralysis of the right arm, residual kidney damage, marked impairment of speech, and emotional instability.

5. The existence of such condition as described in Paragraph 4 hereof renders the possibility of conception and

further pregnancy exceedingly perilous to the life of said patient, in that such a pregnancy has a decided tendency to induce in such a person an abnormal condition, known as hypertensive toxemia of pregnancy, and if such condition should occur in her case it would probably result in her death.

6. Said patient needs and requires, and has asked the plaintiff for medical advice as to what preventive measures can be taken to avert the occurrence of the dangerous condition described in Paragraph 5 hereof.

7. It is the opinion of the plaintiff that the best and safest medical treatment which could be prescribed for said patient would be to inform her as to methods of preventing conception. Plaintiff has knowledge of drugs, medicinal articles and instruments which in fact could be used by said patient in a safe, sanitary and effective manner so as, without injury to the patient, to prevent the conception, and avert the consequences and results thereof, as described in Paragraph 5 hereof.

8. Medically speaking, the use of such articles, drugs and instruments is indicated as the best and safest preventive measure necessary for the protection and preservation of the life and health of said patient.

9. The defendant State's Attorney, in the course of his public duty, intends to prosecute any offense against the Statutes and common law of the State, and claims that the giving of information and advice and the procurement and [fol. 15] delivery of drugs, articles and instruments and the use thereof, as stated in Paragraph 7, would constitute offenses forbidden by the criminal statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949.

10. The plaintiff claims, on the contrary, that such acts proposed by him to be done do not violate any valid Statute nor any valid rule of the common law of this State, but, rather, constitute appropriate, effective and necessary measures which he is obligated to take under his right and duty to practice his profession in the medically approved fashion

in a matter involving the very life of his patient. However, the plaintiff, as a physician and a citizen and resident of this State, is ignorant as to his rights, privileges, powers and immunities, and his duties and obligations, on the one hand, as concern his relations with this State, and on the other hand as concern his relations with said patient.

11. If this Court shall determine and declare the prescription and advice by plaintiff for the use of such articles, drugs and instruments for the treatment of said patient under the circumstances of this case not to be forbidden by the criminal statutes and common law of this State, and especially by the provisions of Section 8568 and Section 8875 of the General Statutes of Connecticut, Revision of 1949, because such statutes are in conflict with the Constitution of the United States and especially of the Amendment XIV thereof, plaintiff in the course of his professional work and duties will make such prescription and give such advice and will cause to be procured and delivered to said patient such drugs, articles and instruments, and will as a physician instruct, or cause her to be instructed, how to use the same in a safe, sanitary and effective manner.

If however, this Court should find and determine that the proposed prescription, advice, procurement, delivery, treatment and instruction described above would constitute an offense forbidden by said Statutes and the common law, and that such Statutes are not in conflict with the Constitution of the United States, and if the plaintiff should be convicted of the commission of offenses against said Stat- [fol. 16] utes, the plaintiff believes he might be liable under the provisions of Section 4358 of the General Statutes of Connecticut, Revision of 1949, to suspension, revocation or annulment of his license to practice medicine, and the consequent loss of his means of livelihood in addition to fine or imprisonment or both.

12. Unless the remedy herein prayed for be granted, the plaintiff, as a physician pursuing his professional interest and obligation will suffer irreparable injury.

13. The plaintiff has an interest, legal or equitable, by reason of danger of loss of liberty and/or property or of uncertainty as to his rights and other jural relations.

14. There is an actual bona fide and substantial question or issue in dispute, and substantial uncertainty of legal relations which require settlement between the parties.

15. All persons having an interest in the subject matter of the complaint are parties to this action.

The plaintiff claims a declaratory judgment which shall declare:

1. Whether or not sections 8568 and 8875 of the General Statutes of Connecticut Revision of 1949 are in conflict with the Constitution of the United States and especially of Amendment 14 thereof as depriving plaintiff of property and liberty without due process of law.

2. Whether or not said Statutes constitute a valid exercise of the police power of the state as applied to the facts stated in this complaint.

I hereby certify that I have personal knowledge of the financial responsibility of the plaintiff and deem it sufficient to pay the costs of this action.

Of this writ with your doings thereon, due service and return make.

Dated at New Haven this twenty-second day of May, 1958.

Catherine G. Roraback, Commissioner of the Superior Court.

[fol. 17]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

DEMURRER—Filed November 7, 1958

(Clerk's Note—Similar demurrers were filed in all three cases.)

The defendant demurs to the complaint in the above-entitled action on the following grounds:

1. The plaintiff is seeking an interpretation of statutes which have previously been conclusively determined by the Supreme Court of Errors.

2. The plaintiff in the present action is seeking to determine by declaratory judgment certain alleged rights and jural relations under Sections 8568 and 8875, which rights and jural relations have been conclusively determined by our Courts in previous decisions.

3. The passage of time and a change in Court personnel cannot be grounds for seeking a review of statutes which have previously been construed and determined by our Courts.

4. The complaint does not conform to the necessary requirements of the rules of Court for declaratory judgments because:

(a) There is no uncertainty as to the rights or jural relations of the plaintiff.

(b) The plaintiff does not set forth any actual bona fide and substantial questions or issues in dispute or substantial uncertainty of legal relations which require further settlement by this Court, since said issues have been previously determined.

(c) All parties having an interest in the subject matter of the complaint are not parties to this action.

5. The above action is brought against Abraham S. Ullman, acting in his official capacity as State's Attorney, and as such is not maintainable since the action is in effect against the State and the plaintiff does not allege any statute indicating that the State has authorized or consented to the bringing of said action.

Defendant,
by John J. Bracken, Attorney General; Raymond J. Cannon, Assistant Attorney General, His Attorneys.

[fol. 18]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

MEMORANDUM OF DECISION ON DEMURRERS IN ALL THREE CASES—January 5, 1959

These five actions were instituted to determine by declaratory judgments the constitutionality of two sections of the General Statutes of the State of Connecticut as to the plaintiffs who brought these actions.

The Statutes are as follows:

Section 8568. "Use of Drugs or Instruments to prevent Conception. Any person who shall use any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

Section 8875. Accessories. Any person who shall assist, abet, counsel, cause, hire or command another to commit [fol. 19] any offense may be prosecuted and punished as if he were the principal offender.

To each of these actions the defendant has interposed a demurrer on each of the following grounds:

1. This is a request for a declaratory judgment on an issue which has previously been determined by our Supreme Court of Errors.

2. Passage of time and change in court personnel.

A study of the issues shows us that the basic issue has been before our Supreme Court on at least two former occasions.

State v. *Nelson*, 126 Conn. 412, viewed the following facts under the following circumstances. This was a criminal prosecution. The accused were the Doctor, the patient and the attending nurse. The charge violation of these identical statutes then bearing captions Sections 6246 and 6562, G.S. 1930. The accused demurred on the ground that Section 6246 (8568) constitutes an interference with the individual liberty of citizens and a deprivation thereof without due process of law violative of the federal and state constitu-

tions, and, specifically, because it applies where a married woman makes use of such drugs, articles or instruments, for the purpose of preventing conception:

a. Upon the recommendation and advice of a physician.

b. Under circumstances in which all physicians would agree would jeopardize her life.

c. Where, for health reasons, the use thereof is necessary for such purpose.

d. Where such contraceptives are necessary to protect and procure the best possible state of health and well being.

The trial court sustained the demurrer and found the accused not guilty. The state, with the permission of the trial court, appealed.

The Supreme Court found error and ordered the demurrers overruled.

Tileston v. *Ullman*, 129 Conn. 84, is an action where as here a declaratory judgment was sought as to whether the statutes prohibit a licensed physician from prescribing the use of contraceptives for married women in cases where pregnancy would endanger life or health, and if so whether such statutes are constitutional.

[fol. 20] The court held:

1. The reasoning of the opinion in the *Nelson* case *supra* control the instant case and reject the claims now made by the plaintiffs.

2. That decision became the law of the state.

3. Change in personnel (of the Supreme Court) affords no ground for reopening a question which has been authoritatively settled.

4. The history of this type of legislation from its first mention in our statutes in 1879 to date show repeated and recent refusal of the legislature to accept and except exceptions as are here suggested.

5. For the courts to construe these plainly worded statutes as unapplicable to physicians, even under the limited circumstances of this case, would be to write into that statute what is not there and what the legislature has therefore refused to place there.

As to constitutionality of such statutes we again turn to *Tileston* v. *Ullman*, *supra*, at page 90 where reference is made to *Commonwealth* v. *Gardner*, 300 Mass. 372, "The terms of the statute are plain, unequivocal and peremptory, and contain no exceptions, that the statute (Mass.) was originally enacted in 1879 and that under the police power the legislature, without any denial of rights under the state or federal constitution."

For the above reasons the demurrers are sustained.

Healey, J.

[fol. 21]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

MOTION FOR JUDGMENT AFTER DEMURRER SUSTAINED—Filed January 21, 1959

(Clerk's Note—Similar motions were filed in all three cases.)

The defendant in the above-entitled action represents that a demurrer to plaintiffs' complaint was sustained by the Court on January 5, 1959, and more than fifteen days have elapsed since that date and the plaintiffs have informed the defendant that they do not intend to plead over.

Wherefore, the defendant moves that judgment be entered for the defendant because of the failure of the plaintiffs to plead further after demurrer sustained.

Defendant,

By Albert L. Coles, Attorney General; Raymond J. Cannon, Assistant Attorney General, Its Attorneys.

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

ORDER ENTERING JUDGMENT—January 30, 1959

(Clerk's Note—Similar orders were entered in all three cases.)

The Court having heard the above motion, it is hereby

Ordered that judgment be and is hereby entered for the defendant on demurrer sustained.

By the Court (Thim, J.), Edward Horwitz, Clerk.

[fol. 22]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

No. 87985

PAUL POE and PAULINE POE, of the Town and County of New Haven, State of Connecticut,

vs.

ABRAHAM S. ULLMAN, of the Town of Hamden, County of New Haven, State of Connecticut, State's Attorney in and for the County of New Haven.

Present: Hon. John R. Thim, Judge.

JUDGMENT—January 30, 1959

This action by writ and complaint dated May 22nd, 1958, claiming a declaratory judgment declaring:

1. Whether or not Sections 8568 and 8875 of the Connecticut Revised Statutes of 1949 are in conflict with the Constitution of the United States and especially of Amendment XIV thereof as depriving plaintiffs of life and liberty without due process of law;

2. Whether or not said Statutes constitute a valid exercise of the police power of the State as applied to the facts stated in said complaint; came to this Court on the first Tuesday of June, 1958, and thence to January 5th, 1959,

when the parties appeared and were heard by the Court (Healey, J.) on the defendant's demurrer to said complaint, as on file, and when the Court sustained said demurrer.

Said action came thence to the present time when, the plaintiffs having failed and neglected to plead further, the parties appeared and were heard by the Court on the defendant's motion for judgment.

The Court, having heard the parties, finds that said motion should be and the same hereby is granted.

Whereupon it is adjudged and declared as a declaratory judgment of the rights of the parties that said Sections 8568 and 8875 are constitutional and constitute a valid exercise of the police power of the State as applied to the facts stated in said complaint, and it is further adjudged that the defendant recover of the plaintiffs his costs taxed at $

By the Court,

Edward Horwitz, Clerk.

[fol. 23]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

No. 7987

JANE DOE, of the Town and County of New Haven, State of Connecticut,

vs.

ABRAHAM S. ULLMAN, of the Town of Hamden, County of New Haven, State of Connecticut, State's Attorney in and for the County of New Haven.

Present: Hon. John R. Thim, Judge.

JUDGMENT—January 30, 1959

This action by writ and complaint dated May 22nd, 1958, claiming a declaratory judgment declaring:

1. Whether or not Sections 8568 and 8875 of the Connecticut Revised Statutes of 1949 are in conflict with the

Constitution of the United States and especially of Amendment XIV thereof as depriving plaintiff of life and liberty without due process of law;

2. Whether or not said Statutes constitute a valid exercise of the police power of the State as applied to the facts stated in said complaint; came to this Court on the first Tuesday of June, 1958; and thence to January 5th, 1959, when the parties appeared and were heard by the Court (Healey, J.) on the defendant's demurrer to said complaint, as on file, and when the Court sustained said demurrer.

Said action came thence to the present time when, the plaintiff having failed and neglected to plead further, the parties appeared and were heard by the Court on the defendant's motion for judgment.

The Court, having heard the parties, finds that said motion should be and the same hereby is granted.

Whereupon it is adjudged and declared as a declaratory judgment of the rights of the parties that said Sections 8568 and 8875 are constitutional and constitute a valid exercise of the police power of the State as applied to the facts stated in said complaint, and it is further adjudged that the defendant recover of the plaintiffs his costs taxed at $

By the Court,

Edward Horwitz, Clerk.

[fol. 24]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

No. 87983

C. LEE BUXTON, of the Town of Woodbridge, County of New Haven, State of Connecticut,

vs.

ABRAHAM S. ULLMAN, of the Town of Hamden, County of New Haven, State of Connecticut, State's Attorney in and for the County of New Haven.

Present: Hon. John R. Thim, Judge.

JUDGMENT—January 30, 1959

This action by writ and complaint dated May 22nd, 1958, claiming a declaratory judgment declaring:

1. Whether or not Sections 8568 and 8875 of the General Statutes of Connecticut Revision of 1949 are in conflict with the Constitution of the United States and especially of Amendment 14 thereof as depriving plaintiff of property and liberty without due process of law;

2. Whether or not said Statutes constitute a valid exercise of the police power of the state as applied to the facts stated in said complaint; came to this Court on the first Tuesday of June, 1958, and thence to January 5th, 1959, when the parties appeared and were heard by the Court (Healey, J.) on the defendant's demurrer to said complaint, as on file, and when the Court sustained said demurrer.

Said action came thence to the present time when, the plaintiff having failed and neglected to plead further, the parties appeared and were heard by the Court on the defendant's motion for judgment.

The Court, having heard the parties, finds that said motion should be and the same hereby is granted.

Whereupon it is adjudged and declared as a declaratory judgment of the rights of the parties that said Sections 8568 and 8875 are constitutional and constitute a valid exercise of the police power of the State as applied to the facts stated in said complaint, and it is further adjudged that the defendant recover of the plaintiffs his costs taxed at $

By the Court,
Edward Horwitz, Clerk.

[fol. 25]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

PLAINTIFFS' APPEAL—Filed February 11, 1959

(Clerk's Note—Similar appeals have been filed in all three cases.)

In the above entitled action the plaintiffs appeal to the Supreme Court of Errors from the judgment rendered therein.

The Plaintiffs,
By Catherine G. Roraback, Their Attorney.

[fol. 26]

IN THE SUPERIOR COURT OF NEW HAVEN COUNTY

ASSIGNMENT OF ERRORS—Filed February 11, 1959

(Clerk's Note—Similar Assignments of Error were filed in all three cases.)

The Court erred:

1. In sustaining the defendant's demurrer to the complaint.

2. In holding and ruling that the issues in this case have been conclusively determined by prior decisions of the Supreme Court of Errors.

3. In holding and ruling that the factual situation in this case is identical to that in the cases of *State* v. *Nelson*, 126 Conn. 412; and *Tileston* v. *Ullman*, 129 Conn. 84.

4. In holding and ruling that the plaintiffs in this case are in the same position as the defendants in the *Nelson* case, and the plaintiffs in the *Tileston* case, *supra*, and that their rights have been conclusively determined by these cases.

5. In holding and ruling that Sections 8568 and 8875 of the General Statutes of Connecticut, Revision of 1949, can be applied to these plaintiffs without unlawfully infringing on their rights to life, liberty and property as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

6. In holding and ruling that Sections 8568 and 8875 of the General Statutes of Connecticut, Revision of 1949, con- [fol. 27] stitute a valid exercise of the police power of the State as applied to the facts stated in this complaint.

7. In holding and ruling that Sections 8568 and 8875 of the General Statutes of Connecticut, Revision of 1949, are not in conflict with the Constitution of the United States, and especially of the Fourteenth Amendment thereto.

8. In holding and ruling that Sections 8568 and 8875 of the General Statutes of Connecticut, Revision of 1949, constitute a valid exercise of the police power of the State.

The Plaintiffs,
By Catherine G. Roraback, Their Attorney.

[fol. 28]

IN SUPREME COURT OF ERRORS OF CONNECTICUT

October Term, 1959

C. LEE BUXTON,

v.

ABRAHAM S. ULLMAN, State's Attorney.

PAUL POE et al.,

v.

ABRAHAM S. ULLMAN, State's Attorney.

HAROLD HOE et al.,

v.

ABRAHAM S. ULLMAN, State's Attorney.

JANE DOE,

v.

ABRAHAM S. ULLMAN, State's Attorney.

OPINION—December 8, 1959

Actions for declaratory judgments determining the constitutionality of legislation forbidding the use and prescription of contraceptive devices, brought to the Superior Court in New Haven County, where demurrers to the complaints were sustained, *Healey, J.*, and, the plaintiffs failing to plead further, judgments were rendered in favor of the defendant, from which the plaintiffs appealed. *No error.*

Catherine G. Roraback, for the appellants (plaintiffs).

Raymond J. Cannon, assistant attorney general, with whom, on the brief, was *Albert L. Coles*, attorney general, for the appellee (defendant) in each case.

BALDWIN, C. J. The complaints in these four actions seek declaratory judgments as to the constitutionality of § 53-32 of the General Statutes, prohibiting the use of any drug, medicinal article or instrument for the purpose of preventing conception, and § 54-196, prohibiting the counseling or abetting of such use.[1] The plaintiff C. Lee Buxton is a licensed physician. The plaintiff Jane Doe is a married woman living with her husband. The plaintiffs Paul and Pauline Poe, as well as the plaintiffs Harold and Hanna Hoe, are husband and wife. Except for Dr. Buxton, all the plaintiffs are using, for the purpose of this litigation, fictitious names. They are patients of Dr. Buxton. The plaintiffs claim that the two statutes deprive them of rights guaranteed by the fourteenth amendment to the federal constitution. The defendant demurred to all the complaints; among his grounds were that the plaintiffs were seeking declaratory judgments on legal issues already conclusively determined by this court and that the passage of time and a change in the personnel of the court would not justify a reversal of those determinations. The trial court sustained the demurrers on these grounds, and the plaintiffs have appealed.

A demurrer to a complaint for a declaratory judgment is proper when the facts alleged do not bring the case within the scope of the statute and rules relating to declaratory judgments. General Statutes § 52-29; Practice Book § 277; *Hill* v. *Wright*, 128 Conn. 12, 15, 20 A.2d 388; Maltbie, Conn. App. Proc. § 227; see *Glens Falls Ins. Co.* v. *Somers*, 146 Conn. 708, 713, A.2d . If the rights and jural relations of parties in the situation of these plaintiffs have been conclusively determined by previous decision of this court, the demurrers were properly sustained upon the grounds stated.

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[1] "Sec. 53-32. USE OF DRUGS OR INSTRUMENTS TO PREVENT CONCEPTION. Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

"Sec. 54-196. ACCESSORIES. Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

Twice in the recent past this court has passed upon questions of interpretation and constitutionality of what are presently §§ 53-32 and 54-196. *State* v. *Nelson*, 126 Conn. 412, 11 A.2d 856, decided March 6, 1940, held that there was no ambiguity in the wording of the statutes which made the legislative intent uncertain so as to permit a construction which allowed an exception in favor of a duly licensed physician who prescribes the use of contraceptive measures to a patient who is a married woman when, in his professional opinion, her general health and well-being necessitate it. We said (p. 417): "Any intention on the part of the Legislature to allow [the exception claimed] is negatived not only by the absolute language used originally and preserved ever since but also, signally, by [the legislature's] repeated and recent refusals to inject an exception." We held, also (p. 422), that the statute was a valid exercise of the police power. We pointed out (p. 418) that the particular facts alleged in the information confined the issues to situations where, in the opinion of the physician, "'the general health' of a married woman requires the use [fol. 29] of contraceptives." We said that there was, therefore, "no occasion to determine whether an implied exception might be recognized when 'pregnancy would jeopardize life' . . . similar to that usually expressly made in statutes concerning abortion." See General Statutes § 53-29.

In *Tileston* v. *Ullman*, 129 Conn. 84, 26 A.2d 582, decided May 22, 1942, the plaintiff, a licensed physician, brought an action for a declaratory judgment to determine whether the statutes forbade him from prescribing the use of contraceptives for a married woman in cases where a pregnancy would endanger her life or health and, if the statutes did, whether they were constitutional. This presented the issue which we specifically said was not before us in the *Nelson* case. We held in the *Tileston* case that, in the light of the legislative history of the statutes and the repeated and recent refusals of the legislature to inject any exception, the statutes could not be construed to allow the exception claimed, and that they were constitutional.

It is claimed that the facts in the cases at bar present an entirely different situation with respect to the rights of the plaintiffs from that presented in the *Nelson* and *Tileston*

cases. In Buxton v. Ullman, the complaint alleges, in substance, and the demurrer admits, that the plaintiff, a licensed physician, has a patient, Jane Doe, a married woman twenty-five years of age, living with her husband. She had been admitted to the obstetrical service of the hospital where the plaintiff, an eminently qualified obstetrician and gynecologist, was in charge. She was three and one-half months pregnant and developed a condition which brought her to the very brink of death. Her physical condition is now such that conception and another pregnancy would be exceedingly dangerous to her life. She needs and requires advice as to what preventive measures can be taken to avert a recurrence of the experience she suffered. She claims a right to live a normal married life with her husband. She has asked the plaintiff for medical advice, and he has knowledge of drugs, medicinal articles and instruments which could be used by her to prevent conception and avoid the serious consequences of another pregnancy. In a companion case, Doe v. Ullman, the plaintiff is the patient described in the Buxton case, and she alleges, in substance, the same facts as are alleged in the Buxton complaint. In another companion case the complaint alleges, in substance, that the plaintiffs, Paul and Pauline Poe, are a married couple who have consulted Dr. Buxton. Mrs. Poe, who is twenty-six years old and living with her husband, has borne three abnormal children, no one of whom lived more than ten weeks. The basic cause of these abnormalities is thought by Dr. Buxton and other qualified medical specialists to be genetic, but the prognosis is very uncertain and renders the prospect of another pregnancy extremely disturbing to both Mr. and Mrs. Poe. In still another case the plaintiffs, Harold and Hanna Hoe, aged twenty-nine and twenty-six years, respectively, husband and wife, have no living children. Mrs. Hoe has been delivered of four children. Owing to the blood groupings of these plaintiffs, Mrs. Hoe's blood being Rh negative and Mr. Hoe's Rh positive, the prospects that they can procreate a normal child is highly unlikely.

The plaintiff Buxton has knowledge of drugs, medicinal articles and instrumentalities which could be safely used to prevent conception and avert the dire consequences which

have followed conception and pregnancy in the women plaintiffs, who desire to live normal married lives with their husbands. If the plaintiff Buxton, on one hand, applies this knowledge by advising these married people as to available contraceptive measures, and if, on the other hand, these married people accept and follow his advice, the statutes would be violated by all the plaintiffs. It is conceded by the demurrers that the use of contraceptives is, according to medical science, the best and safest preventive measure for the plaintiffs to follow in order to avoid pregnancy.

The plaintiffs claim that these facts raise issues not raised in the *Nelson* and *Tileston* cases. The plaintiff Buxton asserts that he has a constitutional right, distinct from that of his patients, to practice his profession free from unreasonable restraint and to advise and prescribe the use of drugs, medicinal articles and instrumentalities which he believes it to be his professional obligation to prescribe. The facts in the Buxton case differ from those in the *Tileston* case in that here the plaintiff, a physician, is asserting an alleged constitutional right of his own rather than an alleged constitutional right of a patient. Essentially, there is no real difference in the nature of the right. The effect of regulation of a business or profession is to curtail the activities of both the dispenser and the user of goods or services. Both are deprived of some advantage which they might otherwise have. The Doe, Poe and Hoe cases differ from the *Nelson* and *Tileston* cases in that the plaintiffs here are asserting their rights, as patients, to the benefit of a physician's prescription for the use of contraceptives which would relieve them of a dangerous threat to their health and happiness. Their right, too, is essentially [fol. 30] the same as that of the physician. In other words, the difference between the *Tileston* and *Nelson* cases and those at bar lies only in the fact that here each plaintiff is asserting his own constitutional right, while in the *Nelson* and *Tileston* cases the doctors were attempting to assert the right of their patients to receive treatment.

It cannot be questioned that the "state may regulate the relative rights and duties of all within its jurisdiction so as to guard the public morals, the public safety and the

public health, as well as to promote . . . the common good.'" *State* v. *Vachon*, 140 Conn. 478, 481, 101 A.2d 509, quoting from *House* v. *Mayes*, 219 U.S. 270, 282, 31 S. Ct. 234, 55 L. Ed. 213. The exercise of this power is always "subject, in the courts, to the test whether it serves the public health, safety and morals at all and whether it does so in a reasonable manner." *Amsel* v. *Brooks*, 141 Conn. 288, 294, 106 A.2d 152. In our tripartite system of government, the judiciary accords to the legislature the right to determine in the first instance what is the nature and extent of the danger to the public health, safety, morals and welfare and what are the measures best calculated to meet the threat. Courts interfere with legislation enacted under the police power only when it clearly appears that the legislative measures taken do not serve the public health, safety, morals or welfare or that they deny or interfere with private rights unreasonably. *Clark* v. *Town Council*, 145 Conn. 476, 482, 144 A.2d 327; *State* v. *Gordon*, 143 Conn. 698, 703, 125 A.2d 477; *Cyphers* v. *Allyn*, 142 Conn. 699, 705, 118 A.2d 318. It was out of respect for these fundamental principles that this court in the *Nelson* and *Tileston* cases refused to so interpret the statutes as to allow an exception to cover situations of the kind presented in the cases at bar and upheld the constitutionality of the statutes.

If the plaintiffs are correct in their claims, we would be required to follow one of two courses: overrule the *Nelson* and *Tileston* decisions by construing the statutes to include the exception proposed in those cases and thus permit physicians to prescribe, and patients to use, contraceptive measures under circumstances similar to those present in the cases at bar, and by that means sustain the constitutionality of the statutes; or hold that the statutes without the claimed exception are unconstitutional. Since the *Tileston* decision in 1942, the General Assembly has consistently refused to amend the statutes so as to allow physicians to prescribe the use of contraceptive measures.[2] Furthermore, two com-

[2] 1943 Sess. H.B. 313. AN ACT TO ESTABLISH STANDARDS FOR CONTRACEPTIVE DEVICES AND THEIR DISTRIBUTION (blank bill). Referred to committee. H. Jour. p. 194. S. Jour. p. 209; committee recommended rejection and passage of substitute. H. Jour. p. 1299;

plete revisions of the general statutes have been approved by the General Assembly and the statutes in question have been left unchanged. Rev. 1949, §§ 8568, 8875; Rev. 1958, Vol. 31, §§ 53-32, 54-196. The legislature is presumed to be aware of the interpretation placed upon its legislation by the courts and the effect which its own nonaction thereafter may have. *Herald Publishing Co. v. Bill*, 142 Conn. 53, 63, 111 A.2d 4; *Hurlbutt v. Hathaway*, 139 Conn. 258, 263, 93 A.2d 161. Courts cannot, by the process of construction, abrogate a clear expression of legislative intent, especially when, as here, unambiguous language is fortified by the refusal of the legislature, in the light of judicial interpretation, to change it. *Watrous v. Connelly*, 141 Conn. 257, 263, 105 A.2d 654; *Herald Publishing Co. v. Bill*, supra; *Pennsylvania R. Co. v. International Coal Mining Co.*, 230 U.S. 184, 198, 33 S. Ct. 893, 57 L. Ed. 1446. In short, courts cannot write legislation by judicial decree; this is particularly so when the legislature has refused to rewrite the existing

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House passed substitute, H. Jour. p. 1339; Senate rejected, S. Jour. p. 1313; House adhered to former action, H. Jour. p. 1480.

1945 Sess. H.B. 317. AN ACT CONCERNING THE RIGHTS OF PHYSICIANS TO PRESCRIBE FOR THEIR PATIENTS (providing for permitting of physicians to prescribe methods or means for the temporary prevention of pregnancy when necessary to save life or prevent serious injury to health). Referred to committee, H. Jour. p. 263, S. Jour. p. 257; hearing held on May 1, but bill not reported thereafter.

1947 Sess. H.B. 953. AN ACT CONCERNING THE RIGHTS OF PHYSICIANS TO PRESCRIBE FOR THEIR PATIENTS (providing that physicians may prescribe for the temporary prevention of pregnancy when in the opinion of the physician, pregnancy would endanger the life or injure the health of a married woman). After receiving a favorable committee report, House passed, H. Jour. p. 733; Senate rejected, S. Jour. p. 752; House adhered to former action, H. Jour. p. 808.

1949 Sess. H.B. 1110. AN ACT CONCERNING THE RIGHT OF LICENSED PHYSICIANS TO PRESCRIBE FOR MARRIED WOMEN (providing for physicians to prescribe for the health of married women). Referred to committee, H. Jour. p. 307, S. Jour. p. 368; hearings held April 12 and May 3 (executive session) but no indication of a further report.

1951 Sess. H.B. 1483. AN ACT CONCERNING THE RIGHT OF LICENSED PHYSICIANS TO PRESCRIBE FOR MARRIED WOMEN (providing for phy-

legislation. The *Nelson* and *Tileston* decisions cannot be overruled by any attempt to reconstruct the statutes.

Since the injection of an exception by construction is legally impossible, can we now hold that the statutes are unconstitutional? By reason of the facts in the instant cases, the claims of infringement of constitutional rights

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sicians to prescribe methods or means for temporary prevention of pregnancy in a married woman when pregnancy would endanger the life or injure the health of such married woman). Referred to committee, H. Jour. p. 273, S. Jour. p. 266; hearing held April 11; bill withdrawn.

S.B. 696. AN ACT CONCERNING THE RIGHT OF LICENSED PHYSICIANS TO PRESCRIBE FOR MARRIED WOMEN (providing for birth control). Referred to committee, S. Jour. p. 192, H. Jour. p. 304; hearing held April 11, but bill not reported thereafter.

H.B. 1485 (same title and content as H.B. 1483). After references to committee by both House and Senate, House passed, H. Jour. p. 717; bill not reported from Senate committee.

1953 Sess. H.B. 1452. AN ACT AMENDING AN ACT CONCERNING THE RIGHT OF LICENSED PHYSICIANS TO PRESCRIBE FOR MARRIED WOMEN. After referral to committee by both the House and Senate, and after a petition was filed to get the bill out of committee, a favorable report was made. House passed, H. Jour. p. 1024; Senate recommitted, S. Jour. p. 942; no report thereafter.

1955 Sess. H.B. 1177. AN ACT CONCERNING THE USE OF DRUGS OR INSTRUMENTS TO PREVENT CONCEPTION (providing for the removal of the prohibition on physicians in the prescribing of the use of contraceptives). House passed, H. Jour. p. 949, Senate rejected, S. Jour. p. 1054.

H.B. 1182. AN ACT CONCERNING THE RIGHT OF LICENSED PHYSICIANS TO PRESCRIBE FOR MARRIED WOMEN (providing for the permitting of licensed physicians to prescribe and others to use and sell contraceptive devices). House passed, H. Jour. p. 954; Senate rejected, S. Jour. p. 1054.

1957 Sess. H.B. 572. AN ACT CONCERNING THE DISSEMINATION OF INFORMATION CONCERNING AND PRESCRIPTION OF CONTRACEPTIVES TO MARRIED WOMEN. House passed, H. Jour. p. 944; Senate rejected, S. Jour. p. 867.

1959 Sess. H.B. 3497. AN ACT CONCERNING PREVENTION OF CONCEPTION PURSUANT TO SPIRITUAL OR MEDICAL ADVICE. Referred to committee, H. Jour. p. 276, S. Jour. p. 292; hearing held April 24, but bill not reported thereafter.

are presented more dramatically than they have ever been before. Basically, the claims are, nevertheless, essentially the same as those which this court considered in the *Nelson* and *Tileston* cases. It may well be that the use of contraceptives is indicated as the best and safest preventive measure which medical science can offer these plaintiffs. That fact does not make it absolutely necessary for the legislature to accept such a solution in all cases, where there is, as pointed out in the *Tileston* case (p. 92), another alternative, abstinence from sexual intercourse. We cannot say that the legislature, in weighing the considerations for and against an exception legalizing contraceptive measures in cases such as the ones before us, could not reasonably conclude that, despite the occasional hardship which might result, the greater good would be served by leaving the statutes as they are.

The plaintiffs' argument raises an issue of public policy. Each of the separate magistracies of our government owes to the others a duty not to trespass upon the lawful domain of the others. The judiciary has a duty to test legislative action by constitutional principles, but it cannot, in that process, usurp the power of the legislature. *State* v. *Gilletto*, 98 Conn. 702, 714, 120 A. 567; *Lumaur* v. *Adorno*, 133 Conn. 511, 513, 52 A.2d 702; *General Motors Corporation* v. *Malquin*, 134 Conn. 118, 132, 55 A.2d 732; *State ex rel. Higgins* v. *Civil Service Commission*, 139 Conn. 102, 111, 90 A.2d 862; *Herald Publishing Co.* v. *Bill*, supra. "'The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed.'" *Van Beeck* v. *Sabine Towing Co.*, 300 U.S. 342, 351, 57 S. Ct. 452, 81 L. Ed. 685, quoting from *Johnson* v. *United States*, 163 Fed. 30, 32; *United States* v. *Cooper Corporation*, 312 U.S. 600, 606, 61 S. Ct. 742, 85 L. Ed. 1071; *Helvering* v. *Wood*, 309 U.S. 344, 347, 60 S. Ct. 551, 84 L. Ed. 796; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, 394, 60 S. Ct. 907, 84 L. Ed. 1263; *Butterworth* v. *Boyd*, 12 Cal. 2d 140, 146, 82 P.2d 434; *Collison* v. *State ex rel. Green*, 39 Del. 460, 486, 2 A.2d 97; *McDaniel* v. *Eagle Coal Co.*, 99 Mont. 309, 314, 43 P.2d 655; *Brahmey* v. *Rollins*, 87 N.H. 290, 298,

179 A. 186. We conclude that §§ 53-32 and 54-196 are a constitutional exercise of legislative power.

Although this disposes of the case, we note the claim of the defendant that in the Doe, Hoe and Poe cases the plaintiffs are obviously fictitious persons and it must necessarily follow that the questions sought to be adjudicated are academic and do not apply to any real person or persons. General Statutes, § 52-89, provides, in part, that writs in civil actions shall describe the parties, presumably by their real names, so that they may be identified. Practice Book § 199 states, among other things, that "[i]n the captions of pleas, answers, etc., the parties may be described as John Doe v. Richard Roe et al., but this will not be sufficient in a judgment file, which must give all the data necessary for use in drawing the execution." Because of the intimate and distressing details alleged in these complaints, it is understandable that the parties who are allegedly medical patients would wish to be anonymous. To obviate any possibility that the parties and the issues raised are fictitious and that the jurisdiction of the court is being invoked to decide moot questions, a plaintiff who desires to use a name other than his own should, before the case is presented in court, acquaint the court of his desires, establish the fact that the parties and issues are real although the names used are fictitious, and secure the court's consent, as was done in these cases. The privilege of using fictitious names in actions should be granted only in the rare case where the nature of the issue litigated and the interest of the parties demand it and no harm can be done to the public interest.

There is no error.

In this opinion the other judges concurred.

[fol. 32]

IN THE SUPREME COURT OF ERRORS OF CONNECTICUT

PAUL POE and PAULINE POE, of the Town and County of New Haven, State of Connecticut,

vs.

ABRAHAM S. ULLMAN, of the Town of Hamden, County of New Haven, State of Connecticut, State's Attorney in and for the County of New Haven.

On Appeal from the Superior Court for New Haven County at New Haven.

JUDGMENT—December 8, 1959

This appeal by the plaintiffs claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this Court, was allowed by the Superior Court for New Haven County at New Haven, on the 11th day of February, A. D. 1959, and came to this Court, at its term held at Hartford, on the first Tuesday in March, A. D. 1959, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court for New Haven County at New Haven, there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellants his costs taxed at $87.20.

Date of judgment, December 8, 1959.

By the Court,

Edward Horwitz, Clerk

[fol. 33]

IN THE SUPREME COURT OF ERRORS OF CONNECTICUT

JANE DOE, of the Town and County of New Haven, State of Connecticut,

vs.

ABRAHAM S. ULLMAN, of the Town of Hamden, County of New Haven, State of Connecticut, State's Attorney in and for the County of New Haven.

On Appeal from the Superior Court for New Haven County at New Haven.

JUDGMENT—December 8, 1959

This appeal by the plaintiffs claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this Court, was allowed by the Superior Court for New Haven County at New Haven, on the 11th day of February, A. D. 1959, and came to this Court, at its term held at Hartford, on the first Tuesday in March, A. D. 1959, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court for New Haven County at New Haven, there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellants his costs taxed at $87.20.

Date of judgment, December 8, 1959.

By the Court,

Edward Horwitz, Clerk.

[fol. 34]

IN THE SUPREME COURT OF ERRORS OF CONNECTICUT

C. LEE BUXTON, of the Town of Woodbridge, County of New Haven, State of Connecticut,

vs.

ABRAHAM S. ULLMAN, of the Town of Hamden, County of New Haven, State of Connecticut, State's Attorney in and for the County of New Haven.

On Appeal from the Superior Court for New Haven County at New Haven.

JUDGMENT—December 8, 1959

This appeal by the plaintiffs claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on fil in this Court, was allowed by the Superior Court for New Haven County at New Haven, on the 11th day of February, A. D. 1959, and came to this Court, at its term held at Hartford, on the first Tuesday in March, A. D. 1959, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court for New Haven County at New Haven, there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellants his costs taxed at $87.20.

Date of judgment, December 8, 1959.

By the Court,

Edward Horwitz, Clerk.

[fol. 35] [File endorsement omitted]

IN THE SUPREME COURT OF ERRORS OF CONNECTICUT

No. 4796

PAUL POE, et al., Appellants,

vs.

ABRAHAM S. ULLMAN, State's Attorney, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 19, 1960

I. Notice is hereby given that Paul and Pauline Poe, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Errors of Connecticut, dated and entered December 8, 1959, affirming a judgment of dismissal of the Superior Court for New Haven County in favor of appellee.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

II. The clerk will please prepare a transcript of so much of the record in this case as was used by the Supreme Court of Errors for transmission to the Clerk of the Supreme Court of the United States, including all pleadings, orders, judgments, and opinions therein.

III. The following questions are presented by this appeal:

Whether Section 53-32 (the criminal accessory statute) and Section 54-196 of the General Statutes of Connecticut, Revision of 1958 (making it a criminal offense for any person to "use any drug, medicinal article or instrument for the purpose of preventing conception") are unconstitutional on their face; or, as applied to both appellants, whether the said statutes deprive them of liberty without due process of law and whether, as applied to Pauline Poe,

they subject her to serious risk of loss of life and of health by reason of future pregnancies, contrary to the Fourteenth Amendment of the Constitution of the United States.

Fowler V. Harper, Attorney for Appellants, 127 Wall Street, New Haven, Conn.

[fol. 36] Proof of Service (omitted in printing).

[fol. 37] [File endorsement omitted]

IN THE SUPREME COURT OF ERRORS OF CONNECTICUT

No. 4798

JANE DOE, Appellant,

vs.

ABRAHAM S. ULLMAN, State's Attorney, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 19, 1960

I. Notice is hereby given that Jane Doe, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Errors of Connecticut, dated and entered December 8, 1959, affirming a judgment of dismissal of the Superior Court for New Haven County in favor of appellee.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

II. The clerk will please prepare a transcript of so much of the record in this case as was used by the Supreme Court of Errors for transmission to the clerk of the Supreme Court of the United States, including all pleadings, orders, judgments, and opinions therein.

III. The following questions are presented by this appeal:

Whether Section 53-32 (the criminal accessory statute) and Section 54-196 of the General Statutes of Connecticut, Revision of 1958 (making it a criminal offense for any person to "use any drug, medicinal article or instrument for the purpose of preventing conception") are unconstitutional on their face, or as applied to this appellant, whether the said statutes deprive her of liberty without due process of law, and subject her to serious risk of loss of life and of health by reason of future pregnancies, contrary to the Fourteenth Amendment of the Constitution of the United States.

Fowler V. Harper, Attorney for Appellant, 127 Wall Street, New Haven, Connecticut.

[fol. 38] Proof of Service (omitted in printing).

[fol. 39] [File endorsement omitted]

IN THE SUPREME COURT OF ERRORS OF CONNECTICUT

No. 4794

C. LEE BUXTON, Appellant,

vs.

ABRAHAM S. ULLMAN, State's Attorney, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 19, 1960

I. Notice is hereby given that C. Lee Buxton, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Errors of Connecticut, dated and entered December 8, 1959, affirming a judgment of dismissal of the Superior Court for New Haven County in favor of appellee.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

II. The clerk will please prepare a transcript of so much of the entire record in this case as was used by the Supreme Court of Errors for transmission to the clerk of the Supreme Court of the United States, including all pleadings, orders, judgments, and opinions therein.

III. The following questions are presented by this appeal:

Whether Section 53-32 and Section 54-196 of the General Statutes of Connecticut, Revision of 1958, are unconstitutional as violating the Fourteenth Amendment of the Constitution of the United States, in that they deprive this appellant of his property without due process of law, since appellant is thereby prevented from practicing his profession as an obstetrician and gynecologist according to scientific principles accepted and approved by the medical profession.

Fowler V. Harper, Attorney for Appellant, 127 Wall Street, New Haven, Connecticut.

[fol. 40] Proof of Service (omitted in printing).

[fol. 41] Clerk's Certificate (omitted in printing).

[fol. 42]

SUPREME COURT OF THE UNITED STATES

Nos. 810 & 811, October Term, 1959

PAUL POE et al., Appellants,

vs.

ABRAHAM S. ULLMAN, State's Attorney;

and

C. LEE BUXTON, Appellant,

vs.

ABRAHAM S. ULLMAN, State's Attorney.

ORDER NOTING PROBABLE JURISDICTION AND CONSOLIDATING CASES—MAY 23, 1960

Appeals from the Supreme Court of Errors of the State of Connecticut.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of three hours is allowed for argument.

May 23, 1960

Mr. Justice Frankfurter took no part in the consideration or decision of these cases.